REMARKS

In the Office Action mailed December 16, 2003, claims 7-10, 17-25 and 28-43 were finally rejected under 35 U.S.C § 103(a) as being unpatentable over Levitan, et al. in view of McGarrahan, et al. Because there is no suggestion or motivation to modify Levitan in view of McGarrahan a *prima facie* case of obviousness has not been established. Further, even if Levitan were wrongly modified, the modification still would not teach or suggest every claim limitation.

Referring to claim 7, claim 7 calls for accessing a predetermined rating assigned to one or more characteristics of content, the rating based on the degree to which the one or more characteristics is present within content, and comparing a rating for content to a content rating specified by an advertiser, the content rating specified by the advertiser to indicate a level of the one or more characteristics present in content that is acceptable to an advertiser.

As stated in the Office Action, Levitan fails to disclose comparing the rating for the content to a content rating specified by an advertiser, the content rating specified by the advertiser to indicate a level of one or more characteristics present in content that is acceptable to the advertiser. McGarrahan, like Levitan, also fails to specifically disclose this feature. Pursuant to McGarrahan, a viewer's viewing habits are monitored. Page 5, paragraph 48. For example, a value for each item of content is assigned. *Id.* The assigned value indicates the receptiveness of a customer to certain products. *Id.* An advertisement is selected that would be effective on or pertinent to that customer. *Id.* Thus, like Levitan, McGarrahan's focus for advertisement selection is on the preference of the viewer.

McGarrahan also discloses parental control. For example, content may be pre-classified by McGarrahan according to categories of language, nudity, violence, etc. and tagged with a parental guidance rating. Page 6, paragraph 59. Thus, parents can control what their children watch on McGarrahan's system. Parental controls, also apply to advertisements and trailers. For example, McGarrahan's invention enables presentation of R rated advertisements in conjunction with R rated movies. Page 5, paragraph 48. In this way, children are kept from having access to inappropriate content, such as the R rated advertisements and/or trailers, which have entertainment value in and of themselves. *Id.* Thus, the association of R rated advertisements

with R rated movies has to do with parental control and not with advertiser selection of content based on content characteristics. In the end, McGarrahan discloses a system that associates advertisements with content based on user viewing habits; not by advertiser selection.

Furthermore, there's no suggestion or motivation to modify Levitan in view of McGarrahan. For example, Levitan describes a system that maintains the privacy of the viewer. Page 1, paragraphs 4 and 8; page 3, paragraph 25. Specifically, Levitan states that it is an object of the invention to provide a system for personal editing of television programs based on viewer information that is privately stored in the viewer's computerized television receiver. Page 1, paragraph 8. In contrast, McGarrahan monitors the viewing habits of the customer via software on a set-top box. Page 5, paragraph 48. This information is reported back (anonymously) to a central billing server as feedback to advertisers. Levitan specifically states that the viewer's profile data is privately stored so that advertisers can use the viewer's information without having access to the information. This aspect of Levitan would be altered by McGarrahan. That is, according to McGarrahan, the advertiser has access to viewer information, which Levitan specifically teaches away from. Thus, it is respectfully submitted that the modification of Levitan in view of McGarrahan would not be obvious. As such, a *prima facie* case of obviousness has not been established with respect to claim 7 or claims dependent therefrom.

Claims 17 and 21 have limitations that are similar to that of claim 7. Thus, for at least the reasons expressed above, a *prima facie* case of obviousness has not been established with respect to claims 17 and 21 or the claims dependent therefrom.

Claim 34 calls for assigning a rating to content, the rating based on the degree to which a characteristic is present in the content, and comparing the assigned rating of content to a content rating required by an advertiser, the content rating required by the advertiser to indicate an acceptable level of the content characteristic with which an advertisement of the advertiser may be associated. Like the previous claims, claim 34 was rejected over Levitan in view of McGarrahan. As previously explained, neither Levitan nor McGarrahan disclose a method where the advertiser requires content to have a specific rating. Moreover, neither reference discloses doing so for the purpose advertisement association with the content.

While McGarrahan discloses a situation where an R rated advertisement may be associated with an R rated movie, this association has to do with parental control. In contrast, pursuant to claim 34, an advertiser requires content to have a specific rating, the content rating to indicate an acceptable level of a content characteristic. For example, the R rated movie of McGarrahan may be due to a particular characteristic that the advertiser does not want to have its advertisement associated with, albeit the advertisement is also rated R. According to McGarrahan, the advertisement may be associated with content anyway based on the viewer's habits. As such, neither Levitan nor McGarrahan teach or suggest every claim limitation of claim 34. Further, as explained above, there is no suggestion or motivation to modify Levitan in view of McGarrahan. Accordingly, a *prima facie* case of obviousness has been established with respect to claim 34 or claims dependent therefrom.

Claim 36 calls for comparing content type to a type of content required by the advertiser. Claim 37 depends from claim 36 and calls for comparing musical content to a type of content required by the advertiser. It is respectfully submitted that the combination of Levitan and McGarrahan does not teach comparing a content type to a content required by the advertiser. For example, neither Levitan nor McGarrahan disclose comparing content type such as movies, music, sports, children's programs, etc. with a type of content required by an advertiser. Likewise, neither reference specifically discloses comparing musical content such as rock, jazz, classical, etc. to a type of content required by the advertiser. The mere fact that a television program may also include musical content has nothing to do with the advertiser requiring a specific type of content such as musical content or a specific type of musical content absent television programming. As such, it is respectfully submitted that a *prima facie* case of obviousness has not been established with respect to claims 36 and 37.

Claim 40 calls for receiving content on a content receiver and automatically interrupting the use of content to replace the content with the advertiser's advertisement when the assigned rating of the content and the content rating required by the advertiser match. As previously stated, the mere fact that a R rated advertisement may be associated with an R rated movie per McGarrahan's parental control does not specifically disclose a content rating required by an

advertiser. For example, the R rating for the movie may be due to violence which the advertiser may be opposed to. Per McGarrahan, the advertiser would not be able to control association of its advertisement with the movie. In other words advertisement selection in McGarrahan is due to user-based preferences not advertiser preference. Thus, there is no teaching in either Levitan or McGarrahan of replacing content with an advertiser's advertisement when the rating required by the advertiser matches a rating assigned to content. Furthermore, as explained above, there is no suggestion or motivation to combine the teachings of Levitan and McGarrahan or to modify Levitan as indicated. Thus, it is respectfully submitted that a *prima facie* case of obviousness has not been established with respect to claim 40. Likewise, for at least the same reasons, it is respectfully submitted that a *prima facie* case of obviousness has not been established with respect to claims 42 and 43.

As each pending claim was rejected under the combination of Levitan and McGarrahan a *prima facie* case of obviousness has not been established for at least the reasons outlined above. Thus, the application is believed to be in condition for allowance. The Examiner's prompt attention in accordance therewith is respectfully requested.

Respectfully submitted,

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